

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHARLES MALIN KEARNEY, SR.,	:	
Plaintiff,	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 02-3568
	:	
GILBERT WALTERS, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this day of January, 2003, upon consideration of the Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 and respondent's Answer thereto, and after review of the Report and Recommendation of United States Magistrate Judge Diane M. Welsh, it is hereby **ORDERED** that:

- (1) The Report and Recommendation is APPROVED and ADOPTED;
- (2) The Petition for Writ of Habeas Corpus is DISMISSED as untimely filed.¹

Anita B. Brody, J.

Copies FAXED on ____ to: Copies MAILED on ____ to:

¹Shortly after Magistrate Judge Welsh issued her findings, the Third Circuit Court of Appeals held that reliance on an attorney's erroneous advice is not grounds for tolling the statute of limitations for non-capital habeas petitions. See Johnson v. Hendricks, No. 00-CV-3633, 2002 WL 31888191, at *3 (3d Cir. Dec. 30, 2002). This decision further supports Magistrate Judge Welsh's Report and my basis for approving and adopting it.